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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 00 186 50143

Office: VERMONT SERVICE CENTER

Date:

JUN 21 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an importer of surgical instruments. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its general manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity. The director also stated that the petitioner failed to submit sufficient information regarding the type of business the petitioner has and its manner of doing business.

On appeal, counsel states that the director's decision is not supported by the record of proceedings. A brief is submitted in support of this statement.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

8 C.F.R. 214.2(1)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The U.S. petitioner states that it was established in 1997 and that it is a wholly-owned subsidiary of Ultra Sergico, located in Pakistan. The initial petition was approved and was valid from May 1, 1999 to April 30, 2000, in order to open the new office. The petitioner seeks to extend the petition's validity and the beneficiary's stay for three years.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed primarily in a managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

Managerial capacity means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior

level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

Executive capacity means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In support of the petition, the petitioner has provided the following description of the beneficiary's duties in the United States:

[REDACTED] who has performed the duties supervising and making policy decision including quality controlling of exportable goods in our head office in Pakistan, will continue to direct, manage, supervise and make policy decisions for the branch company. He will also do the quality controlling of the imported goods and report to the Board of Directors of the head office in Pakistan.

The petitioner also submitted, in pertinent part, a number of invoices of medical equipment sales. Many of those invoices list the foreign parent company as the seller and Surgi-Care Supplies, Inc. as the buyer, while others list the latter as the seller to a variety of buyers.

On June 23, 2000, the Service sent the petitioner a notice requesting that additional information be submitted. Specifically, the petitioner was instructed to submit, in part, the L classification Supplement to Form I-129; stock certificates showing share ownership of the petitioning organization; names, job titles, and credentials of all of the petitioner's employees; the petitioner's most recent yearly and quarterly tax returns; names and job titles of employees who are supervised by the beneficiary; and an explanation of what [REDACTED] is and its relation to the petitioner.

The response to the above request included the petitioner's stock certificate indicating that all of Belos International Inc.'s issued stock is owned by [REDACTED]. It is noted that the petitioner previously claimed that its parent corporation, [REDACTED] owns all of its issued stock. No evidence has been provided establishing [REDACTED] relation to [REDACTED]. While the petitioner submitted a list of positions, descriptions of duties, and list of credentials required for each position, it failed to submit the names of any of the employees that purportedly fill the listed positions.

Although the petitioner was requested to submit its most recent tax return, the only tax documents submitted are from 1997. The quarterly tax documents for 1999 that the petitioner submitted pertain [REDACTED] not to Belos International Inc., the petitioner named on the most recent Form I-129 petition. Although the petitioner submitted a stock certificate showing that it owns 1000 shares of Surgicare's stock, there is no evidence that this is equivalent to 56% of Surgicare's issued stock, as claimed by the petitioner, since Surgicare's stock certificate indicates that 10,000 shares in all were authorized. The petitioner has not submitted any separate documentation to establish how many of the 10,000 authorized shares have been issued for sale. Therefore, the stock certificate merely shows that the petitioner is a stock holder of Surgicare, not necessarily a majority stock holder, as the petitioner claims. The petitioner's claim that the two companies are in the process of merging is unsupported by any documentation. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, counsel resubmits a copy of [REDACTED] stock certificate and explains that the petitioner acquired 56% of Surgicare's stock, thereby taking over "the operational and management control of Surgicare." However, the stock certificate does not establish the petitioner's claim that Surgicare and Belos International are in essence the same entity. Thus, Surgicare's 1999 tax returns and invoices do not constitute an adequate response to the Service's request for additional information about

the petitioning organization. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. 103.2(b)(14). In the instant case, the petitioner has not submitted the requested tax information, names of any of its employees, or any proof that it employs six individuals, as claimed on the petition. Such information is crucial in determining whether the beneficiary is primarily performing managerial or executive functions, or whether he is performing the daily operational tasks of the petitioning organization.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The description of the beneficiary's duties as provided in response to the Service's request for additional information is vague and therefore does not clarify what the beneficiary actually does on a daily basis. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel, or primarily managing an essential function within the organization. Further, the record is not persuasive that the beneficiary functions at a senior level within an organizational hierarchy other than in position title. Based on the evidence submitted, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity.

Beyond the scope of the director's decision, a merger between Surgicare and Belos International, as claimed by the petitioner, gives rise to questions regarding the existence of a qualifying relationship which was originally created between Belos International and Ultra Surgico. The merger as described by the petitioner seems to indicate that the original U.S. petitioner, Belos International, will be replaced by Surgicare, a new entity. This replacement constitutes a fundamental amendment to the approved corporate relationship pursuant to 8 C.F.R. 214.2(l)(7)(i)(C) and necessitates the submission of documentation to demonstrate that a qualifying relationship exists with the new foreign entity, Surgicare. A review of the record shows that a single stock certificate has been submitted indicating Belos International's purchase of Surgicare's stock. This evidence is insufficient in establishing the existence of a qualifying relationship. Furthermore, there is no evidence to establish that the petitioner, Belos International, is actually doing business in a regular, systematic, and continuous manner. 8 C.F.R. 214.2(l)(ii)(H). However, as the appeal is being dismissed on grounds described above, these issues need not be discussed further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.